

ESTTA Tracking number: **ESTTA463888**

Filing date: **03/26/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91203784
Party	Defendant Jupiter IP
Correspondence Address	GEOFF DOBBIN GEOFFREY E. DOBBIN, PATENT ATTORNEY 4278 S 6220 W WEST VALLEY CITY, UT 84128-6501  gedobbinesq@comcast.net
Submission	Answer
Filer's Name	Caroline Wong
Filer's e-mail	caroline@rajpatent.com, trademarks@rajpatent.com
Signature	/Caroline Wong/
Date	03/26/2012
Attachments	DOC120326194941(0001).pdf ( 7 pages )(623900 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

<b>APPLE INC.</b>	<b>Opposition No. 91203784</b>
<b>Opposer,</b>	<b>Mark: AN APPLECORE A DAY KEEPS THE TANGLES AWAY</b>
<b>Vs</b>	<b>Serial No. 85263334</b>
<b>JUPITER IP, LLC</b>	<b>Published: August 16, 2011</b>
<b>Applicant.</b>	

**APPLICANT’S ANSWER TO NOTICE OF OPPOSITION**

Applicant Jupiter IP, LLC, (“Applicant” or “JUPITER IP”) through its undersigned attorneys, submits its Answer to the Notice of Opposition (“Opposition”) filed by Apple Inc. (“Opposer” or “APPLE”) dated 02/13/2012 as follows:

1. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 1 and therefore denies such allegations.
2. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 2 and therefore denies such allegations.
3. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 3 and therefore denies such allegations.
4. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 4 and therefore denies such allegations.

5. On information and belief, Applicant admits the allegations that Millward Brown Optimor (“MBO”) has found Apple to be one of the top 100 brands. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 5 and therefore denies such allegations.

6. On information and belief, Applicant admits that APPLE was referenced to in an August 30, 2010 *Forbes* magazine article entitled “The World’s Most Valuable Brands” and in *The Harris Poll* on July 17, 2007. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 6 and therefore denies such allegations.

7. On information and belief, Applicant admits that APPLE was referenced to in Interbrand’s rankings between 2008 through 2011. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 7 and therefore denies such allegations.

8. On information and belief, Applicant admits Opposer was featured on CNNMONEY.com rankings for “World’s Most Admired Companies” in 2009, 2010, and 2011 and for “America’s Most Admired Companies” in 2008. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 8 and therefore denies such allegations.

9. On information and belief, Applicant admits Opposer was named in a *Business Week* magazine article titled “The Most Innovative Companies.” Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 9 and therefore denies such allegations.

10. On information and belief, Applicant admits that Opposer is the owner of US Registration Nos. 1,078,312; 2,079,765; 3,928,818; 1,114,431; 2,715,578; 3,084,491; 3,679,056; 3,634,113; 3,901,026; 2,462,798; 2,683,410; and 3,710,912 (collectively, “Opposer’s Marks”).

11. Applicant admits that Opposer filed Sections 8 and 15 affidavits for US Registration Nos. 1,078,312; 1,401,154; 1,114,431; 2,657,931; 2,462,798; and 2,683,410. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 8(#2) and therefore denies such allegations.

12. Applicant admits that they filed US Serial Number 85/263,334 on March 10, 2011 for the mark “AN APPLECORE A DAY KEEPS THE TANGLES AWAY” (“Applicant’s Mark”) in connection with, “Apparatus for cable and cord management, namely, non-metal cord minders in the nature of flexible spools adapted for organizing electrical, audio and video cords” in International Class 9 (“Applicant’s Goods”). Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 9(#2) and therefore denies such allegations.

13. Applicant admits the allegations contained in paragraph 10(#2).

14. Applicant admits that a portion of its mark incorporates the word APPLE. Applicant denies that Applicant’s mark is aurally and visually similar to Opposer’s Marks and further denies that viewed as a whole, Applicant’s mark is very similar to Opposer’s Marks in sight, sound, connotation and overall commercial impression. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 11 and therefore denies such allegations.

15. Applicant denies the allegations contained in paragraph 12, and specifically denies that Applicant’s intention is to associate its goods with Opposer.

16. Applicant denies the allegations contained in paragraph 13.

17. Applicant denies the allegations contained in paragraph 14.

18. Applicant denies the allegations contained in paragraph 15.

19. Applicant denies the allegations contained in paragraph 16.

a. Applicant admits that a portion of its mark contains the word APPLE.

Applicant denies the remaining allegations contained in paragraph 16 (a).

b. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 16(b) and therefore denies such allegations.

c. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 16(c) and therefore denies such allegations.

d. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations in paragraph 16(d) and therefore denies such allegations.

e. Applicant denies the allegations contained in paragraph 16(e).

20. Applicant admits that its first use date in Applicant's application for US Serial Number 85/263,334 is May 1, 2010. Applicant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 17 and therefore denies such allegations.

21. Applicant denies the allegations contained in paragraph 18.

### **Affirmative Defenses**

1. Opposer has failed to state a claim upon which relief may be granted.
2. Applicant raises the defense of laches because there has been an unreasonable delay in assertion of Opposer's alleged rights against Applicant of more than eighteen months after Applicant first began use of the mark APPLECORE, and prejudice resulting therefrom in that Applicant has continued to use and invest in its mark, building up valuable business and goodwill in association with the mark during the time the Opposer has remained silent. During the relevant time period, Applicant's business under the mark has grown, with an increase in sales and advertising expenditures under the mark. Opposer has never objected to Applicant's use of any of Applicant's Marks. Applicant has reasonably and justifiably relied to its detriment upon Opposer's prolonged period of inaction and acquiescence in the use of Applicant's Marks. Accordingly, Opposer is barred from maintaining its claims or obtaining the relief sought in this proceeding due to laches.
3. Applicant hereby gives notice that they may rely on any defenses that may become available or appear proper during discovery, and hereby reserves the right to amend this Answer to assert any such defenses.

Dated: March 24, 2012

Respectfully submitted,

  
Caroline Wong  
Jennie Cheng  
Raj Abhyanker, P.C.  
1580 W. El Camino Real, Suite 8  
Mountain View, CA 94040  
Phone: (650) 965-8731  
Fax: (650) 989-2131  
Attorneys for Applicant

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **APPLICANT'S ANSWER TO NOTICE OF OPPOSITION** has been forwarded by post pre-paid first class mail by depositing the same with the U.S. Postal Service on this 26<sup>th</sup> day of March, 2012, to the following:

Joseph Petersen  
KILPATRICK TOWNSEND & STOCKTON LLP  
1114 Avenue of the Americas, 21<sup>st</sup> Floor  
New York, NY 10036  
UNITED STATES

By: Caroline Wong  
Caroline Wong  
RAJ ABHYANKER, P.C.  
1580 W. El Camino Real, Suite 8  
Mountain View, CA 94040  
Phone: (650) 965-8731  
Fax: (650) 989-2131  
Attorneys for Applicant